

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
DWAYNE GAUSE,

Plaintiffs,

-against-

COUNTY OF SUFFOLK, et al.,  
Defendants.

-----X  
**WILLIAM D. WALL, United States Magistrate Judge:**

**ORDER**  
CV 02-4600 (SJF)(WDW)

Before the court, on referral from District Judge Feuerstein, is the defendants' motion seeking a recommendation of dismissal of the pro se plaintiff's complaint<sup>1</sup> pursuant to Rule 37. See DE[83]. The motion is unopposed. For the reasons set forth *infra*, the motion, is denied, without prejudice to renewal.

**BACKGROUND**

By order dated March 12, 2007, the plaintiff was directed to file an amended narrative statement by April 30, 2007. See DE[65]. He did not do so. By order dated June 6, 2007, he was again directed to file the amended statement, this time by August 31, 2007. See DE[68]. The order gave the plaintiff explicit directions as to what should be included in the statement and warned him that "any evidence not fully and accurately disclosed in this final pretrial narrative statement and list of documents and witnesses will be excluded at the trial." *Id.* The plaintiff did file some documents on August 31, 2007, but they did not, the defendants argue, include the required statement or lists. During a teleconference on December 6, 2007, the defendants indicated their intention to file a motion to dismiss based on the plaintiff's failure to file a

---

<sup>1</sup>This order also applies to the cases that have been consolidated with this one - CV 03-498 and CV 03-501.

properly amended narrative statement. Based on that representation, the court adjourned the conference without date by order dated 12/6/07. See DE[77]. The defendants did not proceed with the proposed motion, however, because the plaintiff filed a Notice of Appeal of the 12/6 Order. That appeal was subsequently dismissed, and the defendants now seek a recommendation that the case be dismissed pursuant to Rule 37, for the plaintiff's failure to comply with this court's orders.

### **DISCUSSION**

Rule 37 provides a range of sanctions for failure to comply with a court order including, *inter alia*, the striking of pleadings and the rendering of a default judgment. Fed. R. Civ. P. 37 (b)(2)(A)(iii) & (vi). Simply put, "discovery orders are meant to be followed" and failure to do so may result in a dispositive sanction. *Bambu Sales, Inc. v. Ozak Trading Inc.*, 58 F.3d 849, 853 (2d Cir. 1995). Rule 37 sanctions have three objectives : to "ensure that a party will not benefit from its own failure to comply," to serve as a specific deterrent to obtain compliance with a specific order, and to "serve a general deterrent effect on the case at hand and on other litigation, provided that the party against whom they are imposed was in some sense at fault." *Update Art, Inc. v. Modiin Publ'g, Ltd.*, 843 F.2d 67, 71 (2d Cir. 1988). The decision of whether to impose sanctions is left to the sound discretion of the court. See *National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639, 642 (1976)(per curiam).

The court notes that the document submitted by Mr. Gause on August 31, 2007 in response to the 6/6 order is largely illegible and, to the extent that the court can read it, does not contain the lists that the plaintiff was ordered to provide. Nonetheless, it does represent an effort on the pro se plaintiff's part to comply with the order, and the court will not yet recommend dismissal. The plaintiff's failure to oppose the current motion is disturbing, suggesting a

decision not to further prosecute this action, the court feels that dismissal on Rule 41 grounds is also premature at this time. Instead, the court will give the plaintiff one last opportunity to move this six year old case along. The plaintiff is ordered to submit a legible amended narrative statement that contains lists of evidence and witnesses, by December 1, 2008.

**The plaintiff is warned that failure to comply with this order will result in a recommendation of dismissal upon a renewed motion by the defendants and a finding by the undersigned that the order is not compliant. Such a recommendation, if adopted by the District Judge, will lead to the dismissal with prejudice of all claims in the three consolidated cases.** A copy of this order is being mailed by the court to the plaintiff at his address of record.

Dated: Central Islip, New York  
October 31, 2007

/s/ William D. Wall  
William D. Wall  
United States Magistrate Judge